IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3402 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAYANTILAL HIRALAL MANDALIA

Versus

CHARITY COMMISSIONER

Appearance:

MR KH DAMANI for Petitioner (N.P.)

MS HARSHA DEVANI, AGP, for respondent

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 08/12/2000

ORAL JUDGEMENT

By this petition under Article 227 of the Constitution of India, the petitioner has assailed the order of punishment passed by the respondent, Charity Commissioner dated 1.4.85 after holding departmental inquiry on the ground of misconduct and confirmed by the Gujarat Civil Services Tribunal, by order dated 30.1.87 in Appeal No.355/85.

A short resume of relevant and material facts leading to the rise of this petition may be articulated, at the outset, so as to appreciate the merits of the petition and the challenge against it.

The petitioner was working as an Accountant in the office of Charity Commissioner. Departmental inquiry was initiated against him on the charge that the petitioner falsely, wrongly and without authority had issued a succession certificate to one Rasilaben Kharecha, though such a succession certificate bearing No.446/77 was issued to one Jagdish A. Desai and it was within the knowledge of the petitioner. It was further alleged that an amount of Rs.8,000/- towards expenses and fees of succession certificate paid by Rasilaben was misappropriated by the petitioner. In short, succession certificate bearing No.446/77 was issued by the petitioner to one Rasilaben without authority and misappropriated an amount of Rs.8,000/- which was taken from Rasilaben towards fees and expenses for issuance of the succession certificate and thereby, committed misconduct and act of misappropriation of public fund and his conduct was unbecoming of a Government servant or a public functionary. Along with the chargesheet, statement of imputations and list of 74 documents as well as list of 14 witnesses proposed to be examined, on behalf of the Government, had been served, which was replied by the petitioner on 10.3.80, denying all the allegations. The departmental inquiry was then commenced by the then Charity Commissioner one Mr.Y.M.Desai. During the course of the inquiry, Mr.Desai was superannuated and was succeeded by one Mr.Merchant, who transferred the pending inquiry to the Special Officer for Departmental Inquiry, Ahmedabad. The Special Officer, submitted his report of inquiry, on 10.1.83. In the report, it was reported that the charges against the petitioner were found proved.

On 24.2.83, the respondent, Charity Commissioner, sent a report of inquiry dated 26.12.82 and while agreeing with the finding of the Inquiry Officer, issued show cause notice calling upon the petitioner to explain as to why his pay should not be reduced to Rs.370/- in the lower scale of the Deputy Accountant/Sr. Clerk for a period of three years with a stipulation that during that period he would not be allowed to earn annual increments and also that his reduction would act as a bar for promotion during the period of reduction. It was, also, proposed that after the expiry of the period of reduction, his pay scale, grade, post, promotion, seniority and pay of the

petitioner would be according to the rules obtaining at that point of time on the basis of the basic pay of Rs.370. It was further proposed that the petitioner on reduction would be considered senior most amongst those in receipt of pay of Rs.370/- as basic pay in the cadre of Dy.Accountant/Sr.Clerk.

The petitioner had submitted his reply on 28.3.83. He had, thus, received a show cause notice along with the report of the Inquiry Officer. The petitioner requested for an opportunity to explain his case in person as well as through his advocate and an opportunity of hearing. The opportunity was given as desired by the petitioner. Thereafter, respondent No.1, Charity Commissioner, by a speaking order, dated 29.3.85, passed order in the same terms as it was proposed in the show cause notice, by way of punishment. The order of the Disciplinary Authority holding the petitioner guilty for gross misconduct and imposition of said penalty was questioned by the petitioner by filing Appeal No.355/85 before the Gujarat Civil Services Tribunal. In the said Appeal, the petitioner, partly, succeeded to the extent that after expiry of three years reduction period in the lower rank, the pay of the petitioner would be restored to the level that he was drawing in his original cadre of Accountant, before commencement of the punishment. The appeal came to be decided on 30.1.87. Except, the minor modification, the conclusion of the respondent No.1 recorded as Disciplinary Authority came to be confirmed and affirmed in appeal before the Tribunal, which is, now, challenged in this petition, specifically stating the provisions of Article 227 of the Constitution of India.

The jurisdictional sweep of a writ Court is very much circumscribed. In fact, the petition is under Article 227 of the Constitution of India. Power of the Court under Article 227 is of superintendence. A writ court cannot sit or act as an appellate authority. The common and main anxiety of the writ Court either under Articles 226 or 227 is to see, as to whether, the decision reached by the Authority, below, is tainted or vitiated by any extraneous aspects or consideration. In other words, it is the decision making process and not the quality of the decision which is required to be examined.

The jurisdiction under Article 226 and 227 are separate and independent. In so far as the scope of jurisdiction under Article 227 of the Constitution of India is concerned, this Court can interfere, in view of the host of case-law, impugned order, decision or action is spelt

out to be or founded upon:

(i) erroneous assumption or excess of jurisdiction,

(ii) apparent error of law

(iii) violation of principles of natural justice

(iv) declining to exercise jurisdiction vested in the authority below;

(v) order resulting into any palpable or manifest injustice;

(vi) capricious or fanciful or arbitrary exercise of power, authority or for that purpose, discretion;

(vii) order passed without any evidence or any material;

(viii) perverse order or direction with or without jurisdiction and such other grounds.

Though there is no any mention whatsoever in the entire petition with regard to invocation of exercise of power under Article 226 of the Constitution, it may be noted that the jurisdictional compass of power even under Article 226 is very much limited. It could be exercised where there has been infringement of fundamental rights or for any purpose in the event of violation of legal rights or even principles of natural justice. A writ Court even while exercising powers under Article 226 does not function as an appellate authority. Writ Court cannot reappraise the evidence and substitute its own finding merely because a better view could have been taken by the authority below. A Writ Court has to consider as to whether the decision making procedure was fair and reasonable or not. It has not to undergo a test and trial or an exercise to know the quality of the decision. In short, the powers of the Writ Court are, plenary, discretionary, supervisory, extraordinary, constitutional and equitable.

It appears from the impugned order of the appellate Authority, as well as, from the petition that following two contentions have been raised on behalf of the petitioner, original delinquent.

(1) That there was no sufficient evidence to reach to the conclusion of delinquency and misconduct of the petitioner; and

(2) That reduction of rank and stoppage of increment,

both punishment cannot go together.

Upon dispassionate examination and evaluation of the impugned order of the appellate Tribunal and, also, the order of the Disciplinary Authority, the first contention is, extensively, dealt with and examined by the Tribunal and the view taken by the Tribunal, upon its evaluation of the facts and circumstances and the satisfaction reached in affirming the order of the Disciplinary Authority, has remained unassailable. Since the petitioner's lawyer remained absent, at the time of hearing, the matter being very old, this Court has extensively examined the facts and circumstances and the record and has considered the submissions raised in the petition and also on behalf of the respondent.

Again, it may be noted that in a writ jurisdiction, it is not the sufficiency or efficiency of the evidence which matters, since it is a matter of evaluation and assessment of the facts and circumstances brought on record. It is not a case of finding based on without evidence or without material. The contention has been that it is insufficient. This aspect, as such, cannot be gone into by a writ Court. In other words, the challenge against the quality of the decision is not within the domain of the writ Court. Nothing has been alleged or even spelt out from the record that the decision making process, as such was vitiated by any extraneous consideration nor there is any scope for holding that the considerations which ought to have been considered have not been considered or that what is considered should not have been considered. Apart from the fact that since the advocate of the petitioner was not present, incidentally, upon examination, of the entire record this Court has no hesitation in finding that even the first contention of insufficiency of evidence is meritless.

The second contention is also very well examined and dealt with by the Tribunal. After having considered the reasons and the grounds assigned in support of the rejection of the second contention, have remained unassailable. In advancing the second contention, it was pleaded before the Tribunal that while passing an order of punishment for reduction in rank, the postponement of future increments during the period stipulated in the order is not within the competence of the Disciplinary Authority. Such a specious plea is, rightly, negatived by the appellate authority in the impugned order. This court has also no hesitation in finding that the second contention is also without any substance.

It is open for the Disciplinary Authority while passing an imposition of penalty in reducing the rank to specify the period and also to specify as to whether the stoppage of increment or otherwise. When a Government servant is reduced as a measure of penalty to a lower rank in service, grade or post or to lower time scale, it is open for the disciplinary authority to specify the period for which the reduction shall be effective and from when, then the period is to be specified. It is incumbent upon the authority to specify or state whether on restoration the period of reduction, the same period will operate as postponement of increments and, if so, the extent thereof. This proposition is very well established, extensively explored and is also very much reinforced by the provisions incorporated in Rule 55(2) of the Bombay Civil Service Rules. It would be, not only expedient, but also profitable to quote the said rule.

"55. (1) If a Government servant is reduced as a measure of penalty to a lower stage in his time-scale, the authority ordering such reduction shall state the period for which it shall be effective and whether, on restoration, it shall operate to postpone future increments and, if so, to what extent.

(2) If a Government servant is reduced as a measure of penalty to a lower service, grade or post, or to a lower time-scale the authority ordering the reduction may or may not specify the period for which the reduction shall be effective, but where the period is specified that authority shall also state whether, on restoration the period of reduction shall operate to postpone future increments and, if so, to what extent."

It could very well be seen from the aforesaid provision that the second contention holds no water. The Tribunal in its appellate jurisdiction has elaborately taken into consideration this proposition and has correctly and rightly rejected the second contention. Independently, also, this Court is satisfied that the second contention raised is absolutely meritless and requires to be thrown overboard.

After having taken into consideration all the relevant facts and circumstances emerging from the record of the present case and the relevant proposition of law, coupled with the jurisdictional sweep of the writ court, this

Court has no hesitation in finding that this petition is sans-substance and deserves only and only fate of rejection. Accordingly, it is rejected with costs. Rule discharged.

(J.N.Bhatt, J.)

(vjn)